IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 156

GEORGE K. ROSENBERG, DISTRICT DIRECTOR,
Petitioner,

—v.—

YEE CHIEN WOO,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX TO APPENDIX

INDEX

Proceedings Below

Chronological List of Important Proceedings and Dates

Date	
March 8, 1966	(1) Application for classification as a refugee filed in district office, Immigration and Nationalization Service, Los Angeles, California
October 24, 1966	(2) Decision and Order of District Director entered.
....., 1966	(3) Affidavit of Applicant in Support of Appeal filed.
April 11, 1967	(4) Decision and Order of Regional Commissioner, Immigration and Naturalization Service, Southwest Region, San Pedro, California entered
May 9, 1967	(5) Complaint filed in U.S. District Court for the Southern District of California
July 19, 1967	(6) Notice of Motion to Dismiss filed
August 4, 1967	(7) Minutes of District Court on hearing on Motion to Dismiss
August 10, 1967	(8) Order on Motion to Dismiss entered
August 28, 1967	(9) Answer filed
Jan. 25, 1968	(10) Notice of Motion for Summary Judgment filed
April 29, 1968	(11) Minutes of District Court on Hearing on Motion for Summary Judgment
November 27, 1968	(12) District Court's Decision and Order entered

Date	
January 27, 1969	(13) Notice of Appeal filed
December 18, 1969	(14) Opinion of U.S. Court of Appeals filed
December 18, 1969	(15) Order directing filing of opinion and filing and recording of Judgment entered
December 18, 1969	(16) Judgment of U.S. Court of Appeals entered

EXHIBIT (A)

Form Approved.
Budget Bureau No. [Illegible]

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

APPLICATION FOR CLASSIFICATION AS A REFUGEE

(Under the proviso to Section 203(a)(7), Immigration and Nationality Act as amended)

File No.
A - 12 - 684 - 382

APPLICANT TO FURNISH THE FOLLOWING INFORMATION
(See Instructions on Reverse)

Type or Print

1. My name is: First YEE Middle CHIEN Last WOO

2. I reside in the United States at:
(Apt. No.) *(No. and Street)* *(City)* *(State)* *(ZIP Code)*
1325 B Coast Blvd. La Jolla, California

3. I was born in: *(City or Town)* *(Province)* *(Country)*
Shanghai China

4. I am:

☒ Male ☐ Single
☒ Married
☐ Female ☐ Divorced
☐ Widowed

5. My Father's name and address is:

6. My Mother's name and address is:

7. My spouse resides at:
(City or Town) *(Province or State)* *(Country)*
1325 B Coast Blvd. La Jolla, California USA

8. Date married: 12/17/53
Place married:

(City or Town) *(Province or State)* *(Country)*
Hong Kong

9. I fled or was displaced from *(Name of Country)* on or about *(month) (day) (year)* for the following reasons *(state in detail)*: I fled from Mainland China in 1953 because the Communist Government of China expropriated my business as distributor for Frieden & Underwood Business Machines and office furniture in Shanghai and Chungking. As the business was worth about $500,000, I was regarded as a capitalist and of doubtful loyalty to the Communists. I feared for my life and therefor fled.

10. I am unwilling or unable to return to the country from which I fled or was displaced because: Reasons: *(State in detail)*. I am unwilling to return to China because I am opposed to the Communists in control of my Country because they have stolen my business. My wife's father also was a businessman with 20 employees, and the Government took away his business, let him work for one year as an employee then fired him, and he became ill and died in 1957. Her brother was imprisoned for two years as a suspicious person and brainwashed during that two years. I hate the Communists and have been outspoken about my dislike of them and the Regime.

11. In the spaces below, list *all* of your entries into and departures from the United States. *(Show your last entry FIRST.)*

ENTRIES		DEPARTURES	
Date	Port	Date	Port
1960, May 22	Seattle, Wash.		
1959	Portland, Ore.	September, 1959	

12. I ☐ have ☒ have not been absent from the United States during the past two years.

/s/ Yee Chien Woo — Mar. 8, 1966
(Signature of Applicant) — *(Date of Signature)*

Signature of person preparing form, if other than applicant:

I declare that this document was prepared by me at the request of applicant and is based on all information of which I have any knowledge.

/s/ Gordon G. Dale

Address of person preparing form, if other than applicant:

131 West Wilshire
Fullerton, California

Occupation: Attorney

DO NOT WRITE BELOW THIS LINE

Interview on:

Date:

At:

Immigration Officer

☐ Approved. Immigrant Visa Number Is Allocated to Applicant Pursuant to the Proviso to Section 203 (a) (7), Immigration and Nationality Act, As Amended.

☐ Disapproved Because

Date — District Director

INSTRUCTIONS

This form must be executed, signed and submitted in one copy with your Application for Status as a Permanent Resident, Form I-485, if you are claiming preference classification as a refugee. A separate form must be submitted for each member of your family who is claiming such classification. The form shall be executed by the parent or guardian of a child under 14 years of age.

1. INTERVIEW—The person who executes this form will be required to appear for an interview before an immigration officer. The interview may be waived in the case of a child under 14 years of age.

2. PENALTIES—Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact or using any false document in the submission of this application.

EXHIBIT (B)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
LOS ANGELES, CALIFORNIA

Oct. 24, 1966

File: A12 684 382

In re: Yee Chien WOO, also known as Harry WOO

APPLICATION:

For classification as a refugee under the proviso to section 203(a)(7) of the Immigration and Nationality Act, as amended.

IN BEHALF OF APPLICANT:

Gordon G. Dale, Esq.
131 West Wilshire
Fullerton, California 92632

The instant application for classification as a refugee under the proviso to section 203(a)(7) of the Immigration and Nationality Act, as amended, was filed on March 8, 1966. The applicant was interviewed in connection with this application by an officer of the Service at San Diego, California on April 13, 1966 and October 4, 1966. On each of these dates, question and answer statement under oath was taken from the applicant at which time his attorney was present and participated in the interrogation.

The applicant is a fifty-three year old married male, a native and citizen of China by reason of his birth in Shanghai, China. From the date of his birth to 1953, he resided in Shanghai, China except for a five year period commencing in 1941 when he lived in Chungking, China as a result of the Japanese occupation. As a result of his first marriage which terminated by the death of his wife, the applicant has three sons and two daughters presently residing in Shanghai. The applicant owned a typewriter and office equipment business both in Shanghai and Chungking and continued in this enterprise until 1952

when his business and other assets were confiscated by the Chinese Communists who first took over the government in China according to the applicant in 1949. At the time of this confiscation his business grossed an annual sum of $120,000.

The applicant testified that in 1952 he was arrested by the Communists in China and detained by them for fourteen days during which he was interrogated and forced to reveal his financial holdings. He was then released. After his business was confiscated, he was employed by others in Shanghai.

The applicant testified that after three refusals of his applications for permission to leave Shanghai, his fourth request in 1953 was granted after intercession by his then employer for a visit outside of China with the understanding that he would return. He departed in 1953 for Hong Kong and has not since returned to China. At the time of his departure, he states that he took nothing with him in the way of assets or property.

On December 17, 1953 in Hong Kong, he married his present wife, Yow Dai WOO, a native and citizen of China, and of this marriage a son was born to them in Hong Kong on July 2, 1954. Shortly after his arrival in Hong Kong, he started a business of taking orders for merchandise and clothing under the name of Harry Woo Trading Company which business continued until some time in 1965 when his wife and child departed Hong Kong for Canada. The applicant has stated that he is in possession of a valid Hong Kong Certificate of Identity which is sufficient documentation for his return to Hong Kong and permission to reside there. He stated that he did not know whether he would be permitted to reopen his business in Hong Kong were he to return but knew of no reason why he would not be permitted to do so. He states that he has never been persecuted in Hong Kong but is fearful of returning there because it could fall to the Chinese Communists at any time. He stated that he had no property, assets, or relatives in Hong

Kong and that he and his wife occupied an apartment during the period of their residence there.

The applicant stated that he has never engaged in politics and that he belonged to no specific religious faith until 1962 when he joined the Catholic Church. He expressed the fear that he would be persecuted in China as a member of the capitalist class and because he had advised many persons in Hong Kong not to return to China. He states his opposition to Communism.

The applicant was physically present and residing in Hong Kong from 1953 when he departed the mainland of China until 1959 when he was admitted to the United States as a temporary visitor for business with an appropriate visa in order to operate a concession at the World International Fair in Portland, Oregon and later in Chicago, Illinois. Following this temporary admission to the United States, he departed and returned to Hong Kong in September 1959. He remained in Hong Kong with his wife and son until May 22, 1960 when he made his second and final entry into the United States as a nonimmigrant temporary visitor for business in possession of an appropriate visa. His temporary stay in such status expired November 19, 1962 and he has since remained without further permission. His purpose in coming to the United States on this second occasion was to attend the San Diego Fair and the International Trade Mart at which places he sold merchandise imported from his business in Hong Kong. On March 8, 1966, following a hearing in deportation proceedings, an order was entered granting him the privilege of voluntary departure with an alternate order of deportation should he fail to depart voluntarily. The applicant's wife and minor child are also illegally in the United States following their admission as temporary visitors for pleasure from Canada on February 7, 1965. On March 8, 1966, following a hearing in deportation proceedings, an order was entered with respect to the applicant's wife granting her the privilege of voluntary departure with an alternate order of deportation.

Section 203(a)(7) of the Immigration and Nationality Act, as amended, reads as follows:

> "Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section 201 (a)(ii), to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: Provided, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status."

The words "to such aliens" contained in the proviso to section 203(a)(7), as amended, limits the benefits of the proviso to those aliens described in (A) or (B) of that section and who, in addition, have the required continuous physical presence in the United States for a period of at least two years. The instant applicant has the burden

of proving, therefore, that he falls within (A) or (B) of the main body of the section and that he has the required minimum period of continuous physical presence in the United States.

In Matter of K—, A12 491 782, Interim Decision 1636 dated September 9, 1966, it was held that only physical presence in the United States which is a consequence of the alien's flight in search of refuge could be considered as qualifying physical presence within the purview of the proviso. The legislative history with respect to the several prior Refugee Relief Acts, the regulations promulgated and administrative interpretations thereunder, and the legislative history which led to the enactment of section 203(a)(7) of the Act of October 3, 1965, fully support that conclusion as to what type of physical presence is qualifying under the proviso.

The evidence of record in support of the instant application clearly establishes that the applicant, following his departure from the Chinese mainland, resided and was physically present in Hong Kong from 1953 to 1960 except for a period of approximately 115 days in 1959 when he was in the United States as a temporary visitor for business operating a concession at the World International Fair in Portland, Oregon for some 100 days and in Chicago, Illinois for some 15 days. He departed the United States in September of 1959 returning to his residence, his family, and his business in Hong Kong. In 1960 he entered the United States ostensibly as a visitor for business to participate in international fairs in this country. He has failed to depart although the period of his admission expired.

A review of the record in a light most favorable to the applicant establishes that his claimed flight from the mainland of China terminated in Hong Kong where he opened a business, married, and fathered a child. He was permitted to enter, reenter, reside, and remain in Hong Kong pursuant to the duly constituted governmental authorities in that colony as evidenced by his being issued and being presently in possession of a valid

unexpired Certificate of Identity with which he has departed and returned to Hong Kong in 1959 and with which he can again reenter and resume his residence in that colony together with his wife and child.

In determining when physical presence in the United States is a consequence of an alien's flight in search of refuge, the physical presence must be one which is reasonably proximate to the flight and not one following a flight remote in point of time or interrupted by intervening residence in a third country reasonably constituting a termination of the original flight in search of refuge. What is reasonably proximate in any given case must be determined on all of the facts and circumstances presented in each individual case. No hard and fast rule applicable to all cases can be enunciated. On the basis of the facts and circumstances presented in support of the instant application, it must be concluded that the applicant's presence in the United States, whether it be computed from his first temporary entry in 1959 or his second on May 22, 1960, was not and is not now a physical presence which was a consequence of his flight in search of refuge from the Chinese mainland.

It having been determined that the applicant has failed to establish the necessary qualifying continuous physical presence in the United States, no determination need be made at this time whether he qualifies as a member of the class of persons described in (A) or (B) of section 203(a)(7). It is pertinent to note, however, that under the facts presented no claim is being made that the applicant falls within the class of persons described in section 203(a)(7)(B). Insofar as section 203(a)(7)(A) is concerned, the applicant is of a race indigenous to the Chinese mainland and the applicant has testified that he was not a member of any religious sect or group until some time in 1962 after he had left that area. He testified that he never was a member of any political party and had nothing to do with politics. When he was asked as to why he believed he qualified under the proviso to Section 203(a)(7), he stated that it was because he had promised to return to China when he left and had failed

to do so. He readily admitted that this had nothing to do with race, religion, or political beliefs. It would appear, therefore, that the applicant's decision to leave the Chinese mainland was based on his dissatisfaction with the economic system of the Communist government and not at all by reason of persecution or fear of persecution on account of race, religion, or political opinion. As a matter of fact, the record indicates no dissatisfaction from 1949 when the Communists took over the government until 1952 when the applicant's property and assets were expropriated.

On the basis of the facts presented in support of the instant application, I find and conclude that the applicant's physical presence in the United States was not a consequence of his flight from the mainland of China in search of refuge and cannot, therefore, be considered or accepted as qualifying physical presence within the purview of the proviso. His application, therefore, is required to be denied. Since this decision interprets a recently enacted amendment to the Immigration and Nationality Act from which no appeal is provided by law or regulation, the Regional Commissioner, in accordance with 8 CFR 103.4, has directed that it be certified to him for decision.

ORDER: It is ordered that the application for classification as a refugee under the proviso to section 203 (a) (7) of the Immigration and Nationality Act, as amended, be and the same is hereby denied.

IT IS FURTHER ORDERED that the case be certified to the Regional Commissioner for review and final decision in accordance with 8 CFR 103.4.

/s/ George K. Rosenberg
GEORGE K. ROSENBERG
District Director

EXHIBIT (C)

GOULD & DALE
Attorneys at Law
1515 North Broadway
Santa Ana, California 92706
Telephone 547-5641

Attorneys for Applicant

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
LOS ANGELES, CALIFORNIA

File No. A12 684 382

IN THE MATTER OF THE APPLICATION OF
YEE CHIEN WOO, also known as HARRY WOO

For Classification as a refugee under the proviso to section 203(a)(7) of the Immigration and Nationality Act, as amended

AFFIDAVIT OF APPLICANT IN SUPPORT OF APPEAL

Harry WOO being first duly sworn upon oath, deposes and says:

I was residing in Shanghai, China in May 1949 when the Communists took over Shanghai. At the beginning the Communist Government left most of us business men alone, except to compel us to subscribe to government bonds. In early 1950 however, an inventory was made of all of the office machines as well as equipment, furniture, etc., in my business. A communist party "Union" Leader instructed my employees to control the office equipment and not allow me to dispose of any property without permission from the Party.

Shortly thereafter, I was advised that I could not dispose of my automobile because it belonged to the store. Unstated, but as a matter of fact, the store belonged to the State.

In 1951 the government began a "3-anti" campaign against various groups and classes of people. This was

followed by the "5-anti" campaign. During these campaigns, I personally saw truckloads of Chinese with their arms bound behind their backs, driven to an execution ground, and on one occasion, 400 killed at one execution.

At a mock public trial in 1953, in Shanghai, I observed three men "tried" and executed in front of the crowd of on-lookers.

We were directed by the authorities to attend these public executions.

After the executions we were required to report to our neighborhood communist leader and directed to confess any thoughts we had against the Communist regime or the State.

There was absolutely no freedom. One could be arrested at any time. In 1951 I therefore made my first application for an exit visa to get out of Shanghai. When I heard no answer for three months, I went to the authorities to inquire as to my application and was given no answer. After the "3-anti" and "5-anti" campaigns I made another application at the Communist Police Headquarters, for an exit visa. In early 1953 a permit was granted and I entered Hong Kong June 1, 1953.

About three months after I had arrived in Hong Kong I went to the American Consul General's Office to inquire about immigration to the United States. There I talked to a Chinese employee in the Mandarin dialect and asked him what was the procedure to get a visa to go to the United States. He inquired whether I wanted a visitor's visa or an immigrant visa. I told him I wanted an immigrant visa. He said, "If you want to immigrate to the United States you must have relatives or friends in the United States who will sponsor you". I said, "I have no friends or relatives in the United States." He replied, "If you have no relatives and no one who will sponsor you, you are not qualified for a visa."

He then volunteered "Even if you were to get a friend who would sponsor you, you will have to pay your own transportation to the United States which will be over $1000.00 U. S. Can you pay for your transportation?" I said I had no money. Since I was advised I was not qualified, I did not then put in any application.

I first got an identity card in Hong Kong about January 1, 1954.

During this time I went to see an attorney named C. C. Kuo in the Alexander Building in Hong Kong. A friend of mine referred me to him about possibly getting a visa admitting me to the United States or Okinawa. Mr. Kuo said "Okinawa is a United States Air Base; you just got out of Communist China last year, do you think you can go to American territory that easily? No, you are not eligible."

In approximately 1955 I went to the Indonesian Consulate in Hong Kong to try and get a visa to go there. I had some Chinese friends who were in business in Indonesia. The immigrant visa of Indonesia was granted and about the same time, Sukarno began confiscating Chinese business men's property and restricting their operations. My Chinese friends then advised me not to use my visa and go to Indonesia. Later on they migrated to South America.

In 1956 I went to the Brazilian Consulate in Hong Kong to inquire about immigrating to Brazil. I was told that I must have a sponsor in Brazil before I could get an immigrant visa there. As I had no relatives or sponsors I could not obtain a visa.

In 1956 or 1957 I went to a Chinese Relief Organization who helped educated Chinese immigrate to the United States. This organization was located at Tak Hing Street, Number 8, 2nd Floor, in Hong Kong. There I was asked about my formal education, special knowledge and skill and college degrees, if any. Again, I was asked "Have you any friend or relative who will sponsor you for admission to the United States?" I said I had no relatives or friends there. He said to me "You have no chance to get a visa if you do not have a sponsor in the United States." I obtained my visitor's visa to the United States in 1959 to go to the Trade Fair.

I hate the Chinese Communist Government because they have taken away all freedom from the people and because of their confiscating all my property as well as that of my relatives. They will not allow my children to leave China. I have seen how cruel the government

is to anybody who has ever opposed them. I want nothing to do with that form of government and I believe that I qualify as a refugee from China and I fear for my life if I am forced to return to Communist China, because I am against the Communist government there. I have stated this over and over again to all of my friends and acquaintances ever since I left Communist China.

HARRY WOO

Subscribed and sworn to before me
this ..... day of ..... 1966.

_____

Notary Public in and for the County
and State above mentioned

EXHIBIT (D)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Southwest Region

SAN PEDRO, CALIFORNIA

Office of the Regional Commissioner

Please Refer to This File No.

April 11, 1967

FILE: A12 684 382—Los Angeles

IN RE: WOO, Yee Chien

APPLICATION FOR CLASSIFICATION AS A REFUGEE UNDER THE PROVISO TO SECTION 203(a)(7) OF THE IMMIGRATION AND NATIONALITY ACT

IN BEHALF OF APPLICANT:

Gordon G. Dale
Attorney at Law
1815 North Broadway
Santa Ana, California 92706
(Heard in oral argument)

This case has been certified to the Regional Commissioner following denial by the District Director of an application for refugee status under the proviso to Section 203 (a)(7) of the Immigration and Nationality Act.

Applicant, a 53-year-old married male, is a native and citizen of China born in Shanghai. His wife whom he married in Hong Kong during 1953 is also a native and citizen of China. Of this marriage a son was born in Hong Kong in 1954. Applicant's wife and son entered the United States as visitors on February 7, 1965.

Applicant first entered the United States in 1959 remaining for about four months. His last entry was on May

22, 1960 and he has since remained. On each of applicant's entries he entered as a visitor to conduct business in the United States. It has been established in deportation proceedings before a special inquiry officer that applicant and his wife are unlawfully in the United States and their departure, either voluntarily or by deportation, has been ordered. Although no hearing was held on the minor son, he too has overstayed the period for which admitted and is unlawfully in this country. In an effort to prolong their stay, applications seeking adjustment of status under Section 245 have been submitted by each member of the family. Since nonpreference visas are not available to the family, the husband/father submitted an application (I-590A) seeking classification as a refugee under the proviso to Section 203 (a) (7) of the Act. Approval of this application would confer derivative benefits upon applicant's wife and son and permit the adjustment to permanent residents for the family. As heretofore stated the District Director denied this application and the matter is before the Regional Commissioner on certification.

In brief, applicant's history leading up to his claim to being a refugee within the terms of the statute is as follows:

> He was born in Shanghai, China on January 1, 1913, and from birth until 1953 when he departed to Hong Kong he resided in China. He resided in Hong Kong from 1953 until his entry into the United States in 1960.

Based on these facts the District Director found that since the applicant resided in Hong Kong for several years following his departure from China, he was not a refugee as contemplated by the statute and denied the application. Counsel contends that his client is a refugee, he submits a brief and appeared in oral argument in support of his contention.

The statute under which the instant application was filed reads as follows:

Section 203(a)(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section 201(a)(ii), to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the East, and (4) Saudi Arabia and Ethiopia on the south: *Provided*, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

The basic facts in the case are set forth in some detail in the District Director's decision of October 24, 1966 and will not be repeated herein. Counsel agrees that the District Director's statement of facts is correct except that applicant's period of authorized stay as a nonimmigrant visitor for business was last extended to expire on March 28, 1966 and not to November 19, 1962 as related by the District Director.

In his decision the District Director makes several findings based on the record. He finds that: (1) Applicant is of a race indigenous to the Chinese mainland; (2) He was not a member of any religious sect or group until 1962 which was after he left China; (3) He never was a member of any political party and had nothing to do with politics; and based on these factors applicant's departure from China was not because of persecution or fear of persecution on account of race, religion or political opinion but that applicant's decision to leave China was based on his dissatisfaction with the economic system of the Communist government. These findings led the District Director to conclude that applicant did not meet the terms of Part (A) of Section 203(a)(7). The District Director also finds that following applicant's departure from China he resided in Hong Kong for several years during which time he opened a business, married and fathered a child. Also that documents issued to him during this time by appropriate Hong Kong authorities permitted applicant to enter, re-enter and reside and remain in Hong Kong and that with these same documents applicant may now re-enter and resume his residence in Hong Kong with his wife and son. Based on these findings the District Director concluded that since applicant's presence in the United States whether computed from his first temporary entry in 1959 or his second on May 22, 1960, was not and is not now a physical presence which was a consequence of his flight in search of refuge from China, he had failed to establish the continuous physical presence in the United States as required in the proviso to Section 203(a)(7). The District Director cites the *Matter of K—*, Int. Dec. 1636, A12 491 782 of September 9, 1966 and refers to the legislative history of the several prior Refugee Relief Acts, the present Act and the regulations and administrative interpretations thereof as fully supporting his conclusion as to what type of physical presence is qualifying under the proviso.

Counsel on the other hand contends that since applicant has been physically present in the United States since his entry on May 22, 1960, he more than meets the mini-

mum two years required by the statute and that his client is a refugee within the contemplation of the statute and eligible for the classification he seeks. In support of his position counsel urges that that part of Interim Decision 1636 holding that only physical presence in the United States which is a consequence of the alien's flight in search of refuge could be considered as qualifying physical presence within the purview of the proviso is dictum and not legal authority. In his argument in this point counsel cites excerpts from several court decisions and previous refugee acts and the legislative history of those acts.

No issue will be taken with counsel concerning his selection of cases, excerpts therefrom, what they mean to him in the way of interpretation or comparison to his client's factual situation and the brief legislative history recited by him. However, it must be pointed out that one salient difference exists between the present and past refugee legislation. Past legislation was temporary in nature and enacted by Congress because of conditions existing in various parts of the world and such legislation was directed towards stretching forth a helping hand to the extent possible to those refugees caught in the then existing conditions. This is evidenced by the expiration dates written into all but the last Refugee Act, July 14, 1960, which was repealed by the present act with the exception of those sections relating to the adjustment of status of the last of the aliens paroled into the United States under its provisions. In passing these several acts it is evident that Congress was concerned over the plight of refugees. However, a study of the legislative history established that this concern was with the refugee who was forced to exist in a camp or other temporary facility and was dependent upon the host country or welfare organizations, local and international, for shelter and the bare essentials of his existence. Congress did not intend that an alien, though formerly a refugee, who had established roots or acquired a residence in a country other than the one from which he fled would again be considered a refugee for the purpose of gaining entry into

and or subsequently acquiring status as a resident in this, the third country. See *Matter of SUN*, Int. Dec. 1685.

The present refugee section is a permanent part of our immigration statutes. While the wording of the first part differs from previous acts, conditional entry in lieu of parole, this difference stems from Congress's desire to use the term conditional entry to avoid any possible stigma that may attach from the term parole. It is with the second or proviso part of the present refugee section where the question of Congressional intent arises.

It becomes apparent from committee reports that in enacting Section 203(a)(7), Congress was providing permanent provisions for the *resettlement* of refugees not unlike the procedures under the Fair Share Refugee Act, except that under Section 203(a)(7) the United States and not the U. N. High Commissioner for Refugees will determine eligibility for refugee status. (Sen. Rep. No. 748, 89th Cong. 1st Sess. 16-17 (1965) and H. Rep. No. 745, 89th Cong. 1st Sess. 15 (1965)). Since Section 203(a)(7) must be considered in the context of the problem of "resettlement" of refugees, it becomes clear, we believe, that Congress intended that the proviso to Section 203(a)(7) apply to "refugees" as that term is defined in the first part of Section 203(a)(7) and not to aliens who although they had fled from their own country were later resettled in another country. To construe congressional intent otherwise would lead to the conclusion that an alien who fled or was forced to leave his country at any time and went to another country where he established himself in business or obtained employment in competition with the local people, acquired a family and social status and perhaps even becomes a property owner, could at anytime later gain entry into the United States and after two years be granted preferred refugee status. This, we believe, Congress certainly did not intend. The objective to Section 203(a)(7) is to provide for the admission and adjustment of status of refugees who have fled from certain areas and found themselves in camps or in otherwise desperate conditions in the countries to which they had escaped.

The burden is upon the alien to establish that he is a refugee within the terms of the statute (F. Sen. V. U.S. 137 Fed. Sup. 236, 234 F.2nd 656). The applicant's testimony establishes that he left his home in China in 1953 and that his permanent home between 1953 and 1960 was in Hong Kong where he initiated a business, married and had a son. He is in possession of a valid document which permits him to enter, depart, work and reside in Hong Kong. Accordingly, applicant has not sustained the burden of establishing his inability to return to Hong Kong or his unwillingness to return thereto on account of race, religion or political opinion. The decision of the District Director will be affirmed.

ORDER: IT IS ORDERED that the decision of the District Director denying the application be and the same is hereby affirmed.

/s/ Harlan B. Carter

Regional Commissioner
Southwest Region

GOULD & DALE
Attorneys at Law
1515 North Broadway
Santa Ana, California 92706
Telephone 547-5641

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

vs.

GEORGE K. ROSENBERG, District Director
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

COMPLAINT FOR DECLARATORY REVIEW

YEE CHIEN WOO, plaintiff, for his cause of action states:

1. This action is brought pursuant to the provisions of 5 U.S.C. 1009, 8 U.S.C. 1101(a)(15)(J), 8 U.S.C. 1101(a)(27)(C) and 8 U.S.C. 1182(e).

2. Plaintiff was born in Shanghai, China, is a national of China at the present time. Plaintiff last entered the United States on May 22, 1960 as a business visitor. The last extension of his stay as such expired March 28, 1966.

3. An Order to Show Cause and Notice of Hearing on Deportation Proceedings under Section 242 of the Immigration & Nationality Act was served upon plaintiff ordering a hearing on January 26, 1966, and rescheduled to March 8, 1966 in San Diego, California.

4. On said date on March 8, 1966 the Special Inquiry Officer, in Deportation Hearing rendered his decision that plaintiff was deportable on the charge contained in the

Order to Show Cause. He granted plaintiff the privilege of voluntary departure, but ordered plaintiff deported to "The Republic of China on Formosa" in the event he failed to exercise the privilege of voluntary departure. The Special Inquiry Officer, however, refused to entertain plaintiff's application for classification as a refugee under Section 203(a) of the Immigration & Nationality Act as amended at said hearing. (8 U.S.C. 1153).

5. Thereafter said application was filed with the Officer-in-Charge of the Immigration Office in San Diego, California. A copy of said application filed by plaintiff is attached hereto marked Exhibit "A" and is hereby made a part hereof.

6. On October 24, 1966, the defendant District Director of the Immigration and Naturalization Service denied plaintiff's application. A copy of said decision is attached hereto labelled Exhibit "B" and is hereby made a part hereof.

7. The case was certified to the Regional Commissioner of Immigration and Naturalization Service, Southwest Region, San Pedro, California, for review on the same date in accordance with 8 CFR, 103.4.

8. Oral argument was accorded in connection with review of said decision at the office of the Regional Commissioner on December 7, 1966. An affidavit of plaintiff was submitted in connection with this review, a copy of which is attached hereto marked Exhibit "C" and is hereby made a part hereof.

9. On April 11, 1967 the Regional Commissioner affirmed the decision of the District Director denying said application. A copy of said decision is attached hereto and labelled Exhibit "D" and is hereby made a part hereof.

10. Plaintiff contends that under the facts set out in his petition exemplified by Exhibit "A", he is entitled to the relief sought in said petition. Defendant's denial thereof is a departure from any reasonable interpretation of the applicable refugee legislation. Furthermore, said decision ignores the plain, unambiguous meaning of the language of said legislation and seeks to interpret the same according to the view of other directors of dis-

tricts of the Immigration Service and regional commissioners thereof and not incorporated into the enactment. Furthermore, said ruling fails to take into account pertinent facts presented to defendant, to wit: plaintiff is a native and national of China who attested in sworn statements taken in connection with his application on April 13, 1966 and October 4, 1966 to his escape from Red China after arrest, interrogation, and expropriation of his property, detention of all his children, his expressed hatred of the Communist form of Government, and his fear of return to that country therefor, in addition to the facts that he is of the Catholic faith, that he has been physically present in the United States continuously since his last entry on May 22, 1960, thereby establishing clearly, qualification as a refugee, under Section 203(a) 7 of the Immigration and Nationality Act as amended, (8 U.S.C. 1153).

11. By reason of the matters alleged in the preceding paragraph, defendant's decision adverse to plaintiff is arbitrary, an abuse of discretion, and contrary to the plain language of the Statute and to law and court decisions establishing standards for the interpretation of refugee legislation. Plaintiff further contends the defendant erred (a) in concluding the plaintiff was statutorily ineligible for the relief requested, (b) in determining facts in his assessment of plaintiff's compliance with statutory qualifications, (c) in arbitrarily establishing a category of applicants ineligible for the relief provided by Section 203(a)7 of the Immigration & Nationality Act (8 U.S.C. 1153).

WHEREFORE, plaintiff prays that the Court review defendant's aforesaid administrative ruling, interpret the applicable Statute, and order proper administrative action, to wit, the granting of plaintiff's petition for refugee classification under Section 203(a)7 of the Immigration & Nationality Act.

/s/ Gordon G. Dale
GORDON G. DALE
Attorney for Plaintiff

EDWIN L. MILLER, JR.
United States Attorney
JOHN A. MITCHELL
Assistant U. S. Attorney
325 West F Street
San Diego, California 92101
Telephone: 293-5610

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

v.

GEORGE K. ROSENBERG, District Director
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

NOTICE OF MOTION, MOTION TO DISMISS, AND MEMORANDUM OF POINTS AND AUTHORITIES

NOTICE OF MOTION

TO THE PLAINTIFF, YEE CHIEN WOO, AND TO HIS ATTORNEY, GORDON G. DALE:

PLEASE TAKE NOTICE that on August 4, 1967, at 2:00 p.m., in the courtroom of the Honorable Fred Kunzel, the defendant will bring on his motion to dismiss this case.

DATED: July 19, 1967.

EDWIN L. MILLER, JR.
United States Attorney

/s/ John A. Mitchell
JOHN A. MITCHELL
Assistant U. S. Attorney

MOTION TO DISMISS

Defendant respectfully moves this Court for an order dismissing the plaintiff's complaint on the ground this Court does not have jurisdiction over the subject matter set forth in the complaint.

This motion will be based upon the files and records of this case, the attached memorandum of points and authorities and oral argument to be presented on the date set for hearing.

DATED: July 19, 1967.

EDWIN L. MILLER, JR.
United States Attorney

/s/ John A. Mitchell
JOHN A. MITCHELL
Assistant U. S. Attorney

SOUTHERN DISTRICT OF CALIFORNIA

YEE CHIEN WOO vs. G. K. ROSENBERG No. 61-104-K

___ Hon. JAMES M. CARTER X Hon. FRED KUNZEL

Deputy Clerk	*Reporter*
X Hal H. Kennedy	___ Dorothy Albright
___ Patrick Locantore	X Gene Devlin
___ W. N. Zinn	___ Thos. Lancaster

CIVIL MOTIONS

DATE: Aug. 4, 1967

APPEARANCES:

Plaintiff G. G. Dale, C. Estep — Defendant J. Mitchell, A.U.S.A.

Motion To Dismiss

___ Hearing continued to _____

___ Motion granted X Motion denied ___ Motion submitted

___ Briefs to be field: _____
(pltf) (deft) (Pltf) (deft) (Reply)

X Other: Plaintiff to Prepare Ordered

PRE TRIAL HEARING

DATE:

APPEARANCES:

Plaintiff _____ Defendant _____

_____ _____

_____ _____

___ Pre trial order filed ___ Stipulation and order to be submitted

___ Continued to

Other:

COURT TRIAL

(See part II for Wits. and Exbs.)

APPEARANCES:

Plaintiff _____ Defendant _____

_____ _____

_____ _____

Dates of Trial: _____ _____ _____ _____

___ Judgment for ( ) Plaintiff ( ) Defendant $_____)

___ Findings, etc., and Judgment to be prepared by

( ) Plaintiff
( ) Defendant

___ Submitted ___ Briefs to be filed:

___ Other:

Deputies Initials /s/ H.H.K.
12-12-66

GOULD & DALE
Attorneys at Law
1515 North Broadway
Santa Ana, California 92706
Telephone 547-5641

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

vs.

GEORGE K. ROSENBERG, District Director
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

ORDER ON MOTION TO DISMISS

Motion to Dismiss came on regularly to be heard on the 4th day of August, 1967 at the hour of 2:00 P.M., in the courtroom of the Honorable Fred Kunzel, Judge presiding, John A. Mitchell appearing on behalf of the United States Attorney, for defendant and Gordon G. Dale appearing on behalf of the plaintiff, and the matter having been submitted for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion is hereby denied.

DATED: August 10, 1967.

/s/ Fred Kunzel
Judge

EDWIN L. MILLER, JR.
United States Attorney
JOHN A. MITCHELL
Assistant U. S. Attorney
325 West F Street
San Diego, California 92101
Telephone: 293-5610

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

v.

GEORGE K. ROSENBERG, District Director,
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

ANSWER

COMES NOW the defendant, GEORGE K. ROSENBERG, District Director, IMMIGRATION AND NATURALIZATION SERVICE, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

1. The defendant denies each and every allegation contained in paragraphs 1, 10 and 11 of the complaint.

2. The defendant admits the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the complaint.

AFFIRMATIVE DEFENSES

3. The defendant alleges that the complaint fails to state the claim upon which relief can be granted by the United States District Court.

4. The defendant alleges that the United States District Court lacks jurisdiction over the subject matter and over the person.

WHEREFORE, the defendant, GEORGE K. ROSENBERG, District Director, IMMIGRATION AND NATURALIZATION SERVICE, prays judgment as follows:

1. That plaintiff take nothing by virtue of his complaint,
2. For its costs and disbursements incurred herein; and
3. For such other relief as the Court deems just.

DATED: August 28, 1967

EDWIN L. MILLER, JR.
United States Attorney

/s/ John A. Mitchell
JOHN A. MITCHELL
Assistant U. S. Attorney

Attorneys for Defendant

EDWIN L. MILLER, JR.
United States Attorney

RAYMOND F. ZVETINA
Assistant U. S. Attorney
325 West F Street
San Diego, California 92101
Telephone: 293-5610

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

v.

GEORGE K. ROSENBERG, District Director
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

NOTICE OF MOTION, MOTION AND MEMORANDUM OF FACTS AND LAW

NOTICE OF MOTION

TO THE PLAINTIFF, YEE CHIEN WOO, AND TO HIS ATTORNEY, GORDON G. DALE:

PLEASE TAKE NOTICE that on February 5, 1968, at 2:00 p.m., in the court room of the Honorable Fred Kunzel, the defendant will bring on his motion for summary judgment in this case.

DATED: January 25, 1968.

EDWIN L. MILLER, JR.
United States Attorney

/s/ Raymond F. Zvetina
RAYMOND F. ZVETINA
Assistant U. S. Attorney

MOTION FOR SUMMARY JUDGMENT

Now comes the defendant, GEORGE K. ROSENBERG, District Director, Immigration and Naturalization Service, by his attorney, Edwin L. Miller, Jr., United States Attorney for the Southern District of California, and moves this Honorable Court pursuant to the provisions of the Federal Rules of Civil Procedure, Rule 56(b), for summary judgment in favor of defendant. In support hereof defendant states as follows:

1. This Court is without jurisdiction of the subject matter and the person, by virtue of the provisions of Title 8, United States Code, Section 1105(a), whereby review of final orders of deportation and related matters is vested exclusively in the Court of Appeals.

The defendant incorporates herein by reference the contentions and authorities heretofore advanced in its motion to dismiss, which was previously denied. The attention of the Court is respectfully invited to the recent decision in *Yamada* v. *Immigration & Naturalization Service*, 384 F. 2d 214 (C.A. 9, 1967), suggesting a position contrary to that taken here by defendant.

2. Assuming *arguendo* that this Court has jurisdiction, the action is ripe for determination by summary judgment. The case is before the Court solely on the administrative record, and there is no genuine issue as to any material fact.

3. For the reasons set forth in the attached memorandum of facts and law, defendant's rejection of plaintiff's application for classification as a refugee under Title 8, United States Code, Section 1153(a)(7) was neither unlawful, arbitrary, capricious, nor an abuse of discretion, and therefore the defendant is entitled to summary judgment as a matter of law.

WHEREFORE, defendant moves that the Court grant summary judgment in favor of defendant.

Respectfully submitted,

EDWIN L. MILLER, JR.
United States Attorney

/s/ Raymond F. Zvetina
RAYMOND F. ZVETINA
Assistant U. S. Attorney
Attorneys for Defendant

___ Hon. JAMES M. CARTER — X Hon. FRED KUNZEL

Deputy Clerk — *Reporter*

___ Hal H. Kennedy — ___ Dorothy Albright
___ Patrick Locantore — X Gene Devlin
X W. N. Zinn — ___ Thos. Lancaster

CIVIL MOTIONS

DATE: _____

APPEARANCES:

Plaintiff _____ Defendant _____

_____ _____

_____ _____

_____

_____

_____

___ Hearing continued to _____

___ Motion granted ___ Motion denied ___ Motion submitted

___ Briefs to be filed: _____
(pltf) (deft) (Pltf) (deft) (Reply)

___ Other:

PRE TRIAL HEARING

DATE: 4-29-68

APPEARANCES:

Plaintiff Gordon Dale — Defendant Raymond Zvetina

_____ _____

_____ _____

___ Pre trial order filed ___ Stipulation and order to be submitted

___ Continued to

Other: Ord Pltf have on or before 6/28/68 to file memo
Deft to 7/30 to reply & cause stand submitted

COURT TRIAL

(See part II for Wits. and Exbs.)

APPEARANCES:

Plaintiff _____ Defendant _____

_____ _____

_____ _____

Dates of Trial: _____ _____ _____ _____

___ Judgment for ( ) Plaintiff ( ) Defendant $_____)

___ Findings, etc., and Judgment to be prepared by

( ) Plaintiff
( ) Defendant

___ Submitted ___ Briefs to be filed:

___ Other:

Deputies Initials /s/ W.N.Z.
12-12-66

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

v.

GEORGE K. ROSENBERG, District Director, IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

MEMORANDUM OF DECISION

Plaintiff seeks declaratory review from an order denying his application for classification as a refugee under section 203(a)(7) of the Immigration and Nationality Act, 8 U.S.C.A. § 1153(a)(7) (Supp. 1967).

Plaintiff's application was originally filed in connection with a deportation hearing held on March 8, 1966, where he was granted voluntary departure, in lieu of deportation to Formosa. The special inquiry officer refused to entertain plaintiff's application for classification under section 203(a)(7). Subsequently, an application was filed with the Immigration office and on October 24, 1966, the District Director denied the application. The denial was affirmed by the Regional Commissioner of the Southwest Region on April 11, 1967.

The Government's motion to dismiss on the ground that the United States Court of Appeals has exclusive jurisdiction of review by virtue of 8 U.S.C.A. § 1105(a), was denied by reason of the decision in *Yamada* v. *Immigration and Naturalization Service*, 384 F.2d 214 (9th Cir. 1967), and *Tai Mui* v. *Esperdy*, 371 F.2d 772 (2d Cir. 1966), *cert. denied*, 386 U.S. 1017.

Thereafter, the Government filed a motion for summary judgment. This motion is denied, and the decision of the District Director denying plaintiff's application is reversed for reasons hereinafter stated.

Section 203(a)(7) provides for the admission of a limited number of aliens to the United States if:

". . . (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, . . . and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; . . . ."

Since plaintiff was already in the United States on a temporary basis, he applied for a change of status pursuant to section 245 of the Immigration and Nationality Act, 8 U.S.C.A. § 1255 (Supp. 1967).

The facts are contained in a certified copy of the file of the Immigration and Naturalization Service. In 1953 plaintiff was granted a temporary exit visa from Communist China and received permission to enter Hong Kong on June 1, 1953. In December 1953, in Hong Kong, he married. A son was born of the marriage in 1954. Shortly after arriving in Hong Kong plaintiff started a business of taking orders for merchandise and clothing under the name of Harry Woo Trading Company. He entered the United States in 1960 when he received a visa to enter as a business visitor.

It is clear that plaintiff fled Communist China for fear of persecution. The Government fixes upon the express language of section 203(a)(7), i. e., ". . . persecution or fear of persecution on account of race, religion, or political opinion . . .", and argues that plaintiff fled because of economic reasons and, therefore, does not qualify as a refugee. Such a contention ignores the realities of twentieth century world politics. Communist ideology, particularly the Red Chinese variety, makes no distinction between political as opposed to economic beliefs or philosophies. Both capitalist and anticommunist are enemies of the state.

The uncontroverted facts are that plaintiff was a businessman, a capitalist, prior to the communist takeover. Shortly after the communists came to power most businessmen were purged and many executed. In 1952 plain-

tiff was arrested and interrogated for fourteen days. Only after revealing his financial holdings was he released. His business was subsequently confiscated by the state. Plaintiff left Communist China in 1953, penniless. He was allowed to leave only on the condition that he return. This, of course, he did not do.

Therefore, either as a capitalist, an anticommunist, a Catholic, or a "lawbreaker", plaintiff has good reason to fear persecution at the hands of the communists. While he did not convert to Catholicism until 1962, and at the time of his escape was not yet a "lawbreaker", he was a capitalist and an anticommunist. This brings plaintiff within the requirements of section 203(a)(7).

Additionally, the District Director denied plaintiff's application, and the Regional Commissioner affirmed, on the ground that he was not a refugee in that he had been "firmly resettled" in Hong Kong. In support of its position the Government relies on *Min Chin Wu* v. *Fullilove*, 282 F. Supp. 63 (N.D.Cal. 1968); *Matter of Moy*, Int. Dec. 1707 (1967); and *Matter of Sun*, Int. Dec. 1685 (1966). These cases are distinguishable from the instant case in that here plaintiff never intended to remain in Hong Kong permanently.

In *Min Chin Wu*, *supra*, the applicant left Communist China in 1950 and went directly to the Dominican Republic. There are no facts in the opinion indicating that he attempted to immigrate to the United States upon his flight from China or during the fourteen years he owned and operated a business in the Dominican Republic.

In *Moy*, *supra*, the applicant fled from Communist China to Hong Kong in 1949. He remained in Hong Kong until 1956. He then went to Colombia, S. A., and thereafter came to the United States in 1958. At page 4 of the interim decision, the Regional Commissioner stated, "The applicant, to quote from a brief submitted by his former counsel, . . .:

> . . . established that at his domicile in Barranquilla, Colombia, he has a partnership interest in a farm valued at $1,500.00 and has cash savings amounting to $6,000.00 in a Barranquilla bank. He also estab-

lished that he has no intention of abandoning his Colombia residence to which he is able to return (See permit to reenter Colombia which expires January, 1960)."

In *Matter of Sun, supra*, the applicant left Communist China in 1949 and entered Formosa. He lived in Formosa until 1962. While in Formosa he was a member of the armed forces, and later became a representative of the Republic of China to the United Nations from 1962 to 1965. The Regional Commissioner stated:

> ". . . For sixteen of those years he received his livelihood from the Chinese Government of Formosa. The applicant has established himself firmly in that country and obviously has all of the rights of residence and employment there that can be extended to anyone, regardless of place of birth."

The record in the instant case reveals that plaintiff considered Hong Kong a temporary refuge; a way station on the road to permanent resettlement. Plaintiff departed from Communist China friendless and penniless. Having once provided for his physical needs in Hong Kong, he immediately sought information about immigration to the United States. He was advised that without a sponsor in the United States and the necessary funds, he could not immigrate.

During his stay in Hong Kong plaintiff, by hard work and diligence, was able to save enough money to finance several trips to the United States. He is now in a position to provide for himself and his family in this country. Indeed, he has been doing so for the past eight years. His feeling that Hong Kong might not be a safe place to return to is not unfounded.

Plaintiff was prevented from immigrating to the United States in 1953 because of no sponsor and insufficient funds, yet when he stayed in one place and worked to become financially secure he allegedly lost the very status that allowed admittance. In reality, plaintiff had no choice but to stay in Hong Kong until he could afford immigration as a refugee.

Without expressing any opinion as to why Congress chose to omit the "firmly resettled" provision in the amendments to the Refugee Relief Act of 1953, this court finds that plaintiff was never "firmly resettled" and still qualifies as a refugee under the terms of section 203(a)(7). Accordingly, the District Director erred in denying plaintiff's application.

It appears that both the District Director and the Regional Commissioner in this case have not interpreted the statute liberally or as remedial legislation, as have the courts in the past. See *Leong Leun Do* v. *Esperdy*, 309 F.2d 467 (2d Cir. 1962); *Shio Han Sun* v. *Barber*, 144 F. Supp. 850 (N.D. Cal. 1956).

The Regional Commissioner has rendered other decisions which seem contrary in spirit to the Government's decision in this case. See *Matter of Hung*, Int. Dec. 1722 (1967), and *Matter of Rodriguez*, Int. Dec. 1670 (1966).

The case is returned to the defendant for further hearing pursuant to law.

DATED: November 27, 1968

/s/ Fred Kunzel
Chief Judge
U. S. District Court

Copies to:

Gordon G. Dale, Esq.
1815 North Broadway
Santa Ana, California 92706
Attorney for Plaintiff

Hon. Edwin L. Miller, Jr.
United States Attorney
Southern District of California
Attorney for Defendant

I hereby certify that I mailed a copy of this document (together with a copy of the documents listed below) to Gordon G. Dale, Esq., & U. S. Atty. this date of 11-27-68.

WILLIAM W. LUDDY
Clerk

By /s/ [Illegible]
Deputy

EDWIN L. MILLER, JR.
United States Attorney
RAYMOND F. ZVETINA
Assistant U. S. Attorney
325 West F Street
San Diego, California 92101
Telephone: 293-5610

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 67-104-K

YEE CHIEN WOO, PLAINTIFF

v.

GEORGE K. ROSENBERG, District Director,
IMMIGRATION AND NATURALIZATION SERVICE, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that George K. Rosenberg, District Director, Immigration and Naturalization Service, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment (memorandum of decision) entered in this action on the 27th day of November, 1968.

DATED: January 27, 1969.

EDWIN L. MILLER, JR.
United States Attorney

/s/ Raymond F. Zvetina
RAYMOND F. ZVETINA
Assistant U. S. Attorney
325 West F Street
San Diego, Calif. 92101
Attorneys for Defendant

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 24,334

YEE CHIEN WOO, PLAINTIFF-APPELLEE

vs.

GEORGE K. ROSENBERG, District Director, Immigration and Naturalization Service, DEFENDANT-APPELLANT

[December 18, 1969]

On Appeal from the United States District Court for the Southern District of California

Before: MERRILL and TRASK, Circuit Judges, and BYRNE, District Judge *

MERRILL, Circuit Judge:

This appeal presents the question whether an alien, otherwise entitled as a refugee to "Seventh Preference" treatment under § 203(a)(7) of the Immigration and Nationality Act,[1] may be denied such treatment on the

* Hon. William M. Byrne, United States District Judge for the District of Central California, sitting by designation.

[1] 8 U.S.C. § 1153(a)(7) added to the Immigration and Nationality Act by the Act of October 3, 1965 (79 Stat. 911), reads as follows:

"Aliens, who are subject to the numerical limitations specified in section 1151(a) of this title shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

* * * *

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section 1151(a) (ii) of this title, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-

ground that he had become firmly resettled elsewhere and that his entry into the United States was not therefore emergent.

Appellee is a native of Shanghai, China. In 1952 his substantial business and financial holdings were confiscated by the Communist Government. He sought and was granted permission to leave Communist China for a foreign visit with the understanding that he would return. In 1953 he went to Hong Kong and has never returned to Communist China.

In Hong Kong he started a business under the name of Harry Woo Trading Company, taking orders for merchandise and clothing. He was married and a son was born. In 1959 he was admitted to the United States temporarily as a visitor for business purposes, to operate a concession at the International World's Fair in Portland, Oregon. He returned to Hong Kong later that year. On May 22, 1960, he made his second entry into the United States as a business visitor in connection with the San Diego Fair and International Trade Mart. He has never since left the United States. His temporary stay expired March, 1966. By this time he had been joined by his wife and child, who had entered Canada and had been admitted to the United States from Canada as visitors for pleasure. Deportation proceedings were commenced upon his failure to depart. On March 8, 1966, he and

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dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area * * * and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode * * * *Provided*, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status."

his family were granted voluntary departure. They failed to depart. Also on March 8, 1966, appellee applied for classification as a refugee under § 203(a)(7). He has expressed opposition to communism and believes that should he return to Communist China he would be persecuted as a member of the capitalist class. However, he possesses a valid Hong Kong Certificate of Identity which is sufficient documentation to permit his return to Hong Kong. His application was denied by the District Director, Los Angeles, and that decision was affirmed by the Regional Commissioner, San Pedro, California. The Regional Commissioner held that "Congress did not intend that an alien, though formerly a refugee, who had established roots or acquired a residence in a country other than the one from which he fled would again be considered a refugee for the purpose of gaining entry into and or subsequently acquiring status as a resident in this, the third country," citing *Matter of Sun*, 12 I&N Dec. 36 (1966). The Regional Commissioner concluded that appellee is in possession of a document that permits him to return and reside in Hong Kong; consequently, that he had not established his inability to return to *Hong Kong*, or that he is unable to return thereto on account of race, religion or political opinion.

Upon denial of his application appellee brought the instant suit for declaratory judgment under 28 U.S.C. § 201. The District Court ruled that he was entitled on the facts to the benefits of § 203(a)(7), regardless of the applicability of the "firmly resettled" criterion. The Service has taken this appeal.

We hold that § 203(a)(7) does not require, as a condition precedent to conditional entry, that the alien be "not firmly resettled elsewhere."

The nature of the relationship of the refugee to an intermediate host country to which he has fled from his home country and in which he has found temporary asylum is a necessary consideration under this and prior refugee relief acts.

In the Displaced Persons Act of June 25, 1948 (62 Stat. 1009), Congress excluded those who, after fleeing from their home countries, had been received for "perma-

nent residence" elsewhere. In the Refugee Relief Act of August 7, 1953 (67 Stat. 400), Congress included as a condition precedent the fact that the refugee was "not firmly resettled" elsewhere. In the Refugee Act of September 11, 1957 (71 Stat. 639), however, these words were omitted and the phrase "not a national" (of the intermediate country) was substituted. This substituted language was repeated in the Fair Share Refugee Act of July 14, 1960 (74 Stat. 504-5), and also in the Refugee Assistance Act of June 28, 1962 (76 Stat. 121). It was repeated again in the act now before us.

Whether appellee was firmly resettled in Hong Kong is not, then, relevant. What is relevant is that he is not a national of Hong Kong (or the United Kingdom); that he is a national of no country but Communist China and as a refugee from that country remains stateless.

The Service insists that Congress cannot have intended that "once a refugee always a refugee"; that this "literally would make thousands upon thousands of aliens, formerly refugees and now firmly resettled in host countries eligible to apply for conditional entry." But Congress appears to have met this possibility by specifically limiting the number of those who can claim conditional entry under the "Seventh Preference." In any event we cannot disregard the clear manifestation of congressional intent shown by the substitution, in 1957, of the status "not a national" for that of "not firmly resettled" as formerly specified in the 1953 Act. Nothing in the legislative history advanced by appellant persuades us that Congress intended this substituted language to mean anything but what it clearly says. See *United States* v. *Public Utilities Comm'n*, 345 U.S. 295, 315 (1953); *United States* v. *Rice*, 327 U.S. 742, 752-53 (1946).

Judgment affirmed.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday, December 18th, 1969

Before: MERRILL and TRASK, Circuit Judges, and BYRNE, District Judge

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

ORDERED that the type written opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and that a judgment to be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 24334

YEE CHIEN WOO, PLAINTIFF-APPELLEE

vs.

GEORGE K. ROSENBERG, District Director, Immigration and Naturalization Service, DEFENDANT-APPELLANT

JUDGMENT

APPEAL from the United States District Court for the Southern District of California

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Dec. 18, 1969

SUPREME COURT OF THE UNITED STATES

No. 156, October Term, 1970

GEORGE K. ROSENBERG, District Director, PETITIONER

v.

YEE CHIEN WOO

ORDER ALLOWING CERTIORARI—Filed October 19, 1970

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 410753 374